**THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on :07.03.2007

WP(C) No.18366/2006

**MAHINDER KUMAR BANSAL** ...Petitioner

- versus -

**THE STATE ELECTION COMMISSION**
**GOVT. OF NCT OF DELHI, DELHI** ...Respondent

**Advocates who appeared in this case:**
For the Petitioner : Ch. Rabindra Singh with Mr Harinder Chowdhary
For the Respondent : Mr Suresh Tripathi.

**CORAM:-**

## HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in Digest? Yes

## BADAR DURREZ AHMED, J (ORAL)

1. The petitioner is aggrieved by the orders dated 7.12.2004 and 13.11.2006 passed by different State Election Commissioners. By virtue of the order dated 7.12.2004 purportedly passed under the provisions of Rule 92H of the Delhi Municipal Corporation (Election of Councillors) Rules, 1970 (hereinafter referred to as the "said Rules") the petitioner was disqualified for contesting the election and for being chosen as a Councillor of the Municipal

Corporation of Delhi for a period of six years from the date of the order. The order dated 13.11.2006 is an order passed on a petition under Rule 92I of the said Rules whereby the State Election Commissioner was of the view that there was no ground warranting any interference with the order dated 7.12.2004. Meaning thereby that the disqualification of the petitioner for six years with effect from 7.12.2004 was upheld.

2. The learned counsel for the petitioner challenged the said orders essentially on two grounds. The first ground that was taken by him, was that the order dated 7.12.2004 did not disclose any application of mind or reasons for disqualifying the petitioner. It was further contended that the order dated 13.11.2006 by maintaining the said order of 7.12.2004 was also liable to be set aside because of the same reason. The second contention raised by the learned counsel for the petitioner was that in any event, the delay in the passing of the two orders itself was ground enough for their being set aside.

3. The facts which would be necessary for deciding this petition are that the general election for electing the Councillors for the MCD were held on 24.3.2002. The petitioner participated in the said election and contested as an independent candidate from Ward No. 67- Trilok Puri. The result of the election was declared on 27.3.2002. The petitioner was unsuccessful. The petitioner was required to lodge an account of his election expenses with the Returning

Officer within ten days from the date of election of the returned candidate in terms of Rule 92B. The tenth day in this case happened to be 7.4.2002 which was a Sunday and, therefore, the petitioner was required to have lodged the account of expenses by 8.4.2002. Unfortunately, the petitioner did not do so but, was able to lodge the account of election expenses only on 9.4.2002 i.e., a day later.

4. Thereafter, nothing happened till 5.12.2002 when a show cause notice was issued to the petitioner by the Joint Election Commissioner/Secretary, State Election Commission, Delhi, to show cause as to why he should not be disqualified for the delay in submitting the election expenses account by the prescribed date. The petitioner was required to explain the reasons for the delay within ten days of the issuance of the show cause notice. On receipt of the show cause notice the petitioner promptly filed his reply on 13.12.2002. In this reply the petitioner indicated that due to defeat in the election and consequent mental tension, coupled with illness, the election expenses account could not be submitted by him within time and that he was only one day late in submitting the same, which was regretted. It was requested that considering his illness, his explanation be accepted and the delay of one day in filing the election expenses be condoned. Along with this reply the petitioner had enclosed the medical certificate to indicate that he was not keeping well. After the reply was filed by the petitioner an opportunity of hearing was granted

to the petitioner to appear before the State Election Commissioner. Thereafter, on 7.12.2004, i.e., two years after the issuance of the show cause notice, the State Election Commissioner passed the order. Since this order is the bone of contention, it would be appropriate to set out the same in its entirety.

**"(TO BE PUBLISHED IN DELHI GAZETTE EXTRAORDINARY PART.IV)**

**STATE ELECTION COMMISSION**
**N.C.T. OF DELHI, NIGAM BHAWAN, KASHMERE GATE, DELHI-110 006**

No.SEC/MCD/101(9)/2004/9751 Dated 7-12-2004

**ORDER**

Whereas the MCD General Election – 2002 for the election of Councillors was held on 24.3.2002 and the result thereof was declared/announced on 27.3.2002 and

2. Whereas every nominated/contested candidate was required to maintain a true and correct account of election expenses either by himself/herself or through his/her election Agent under the provisions of Rules 92 (A) of the Delhi Municipal Corporation (election of Councillors) Rules, 1970 and

3. Whereas under the provisions of Rule 92 (B) of the Rules, nominated/contested candidate was required to lodge an account of election expenses to the concerned Returning Officer within ten days from the declaration of the result i.e. 7th April, 2002; but 7th being Sunday the following day ie 8th April, 2002.

4. Whereas the nominated/contested candidates specified in Column 4 of the table attached as annexure 'A' in the above election to the Municipal wards specified in Column No.3 against their names have failed to lodge an account of their election expenses as required under Rules 92 (B) ibid as shown in column No.5 of the table, and

5. Whereas the above candidates were issued 'Show Cause Notice' by Regd. AD post giving thereby 10 days time to explain the

reasons/cause for the said failure to submit the election expenses account to the concerned Returning Officer or the Office of State Election Commission.

6. Whereas after considering their representation & replies to the above Show Cause Notice, they were given appropriate opportunity to defend their case in person before the State Election Commission vide letter sent to them by Regd. AD post.

7. Whereas their representations/reply, if given, and statements or the statements of their representative duly authorized by them recorded before the Commission, has been considered under the provisions of Rule 92 – F (8) of the Delhi Municipal Corporation (Election of Councillors) Rules 1970 and the Commission is satisfied that the above candidates have no good reasons or justification for the failure to lodge their account as required under Rule 92 (B) of the rules ibid and

8. Now, therefore, in pursuance of the Rule 92 (H) of the Delhi Municipal Corporation (Election of Councillors) Rules, 1970, the State Election Commission hereby declares the above nominated/contested candidates to be disqualified for contesting the election and for being chosen as a Member/Councillor of the Municipal Corporation of delhi for a period of six years from the date of this order.

**( M.P. TYAGI )**
**STATE ELECTION COMMISSIONER**
No.SEC/MCD/101(9)/2003/9751 Dated 7-12-2004"

Thereafter, the petitioner moved a petition under Rule 92I of the said Rules on 21.12.2004. The State Election Commissioner gave the petitioner an opportunity for hearing on 26.9.2006 and on 13.11.2006 passed the impugned order refusing to interfere with the order of disqualification dated 7.12.2004. This order is also material and, therefore, the same is reproduced in its entirety as under:-

**"ORDER**

This order disposes of petition dated 21.12.2004 under rule 92-I of Delhi Municipal Corporation (Election of Councillors) Rules, 1970.

The facts in the case are that Shri Mahinder Kumar Bansal contested from Ward No. 67 (Trilok Puri) in the MCD General Elections 2002 held on 24.3.2002.

Rule 92B of the said rules requires that every contesting candidate at an election of a Ward shall, within ten days from the date of election of the returned candidate, lodge with Returning Officer an account of His election expenses which shall be a true copy of the account kept by him or by his election agent. Rule 92 H says that if the Election Commission is satisfied that the person :-

a) has failed to lodge an account of election expenses within the time and in the manner required by these rules, and

b) has no good reason or justification for the failure, the Election Commission shall, by order published in the official Gazette, declare him to be disqualified and any such person shall be disqualified for a period for six years from the date of the order.

The returned candidate was elected on 27.3.2002 and therefore the petitioner was required under rules to lodge with the Returning Officer account of his election expenses by 8.4.2002 (7.4.2002 being Sunday). The petitioner filed the account of his election expenses on 9.4.2002. On issuance of a Show Cause Notice as to why he should not be disqualified for not filing the account of election expenses on time, he appeared before the State Election Commission and submitted that delay in filing the account of election expenses was due to the mental tension he was undergoing because of the defeat in the polls. He explained that he had not read the instructions contained in the register because of language problem. He also filed a Medical Certificate to the effect that he was suffering from Bronchites (P) for the period from 3.4.2002 to 8.4.2002. The State Election Commission, holding that the petitioner has no good reason or justification for non-submission of account of election expenses declared him disqualified for contesting election or being chosen as a Councillor to Delhi Municipal Corporation for a period of 6 years from the date of his order i.e. December 7, 2004.

> The petitioner was given a personal hearing by me on 26.9.2006 when he appeared before me and stated that he had earlier explained the reason for delay in filing the election expenses before Shri M.P. Tyagi the then State Election Commission in the hearing held before him, and has nothing more to add.
>
> I have gone through the record and have carefully considered all the relevant facts. His explanation put up before me was duly considered by the State Election Commissioner while passing the impugned order dated December 7, 2004. No additional material evidence which may warrant review of the order passed by the earlier SEC is put forth. Therefore, I do not see any grounds warranting to interfere with the impugned order dated 7.12.2004.
>
> In view of the above, the petition filed by Shri Mahinder Kumar Bansal is hereby rejected, and I order accordingly.
>
> Sd/- S.P. MARWAH
> STATE ELECTION COMMISSIONER."

5. The learned counsel for the respondent submitted that the petitioner was unable to give a satisfactory response to the show cause notice and that is why the order dated 7.12.2004 disqualifying him for a period of six years came to be passed. He submitted that the length of the period of delay in filing the statement of election expenses is not material. What is material is the explanation given for the delay. He submitted that if the explanation is not satisfactory, then the State Election Commissioner has no option but to disqualify the person concerned for a period of six years. There was also no discretion with regard to the period of disqualification. He further submitted that the impugned order dated 13.11.2006 was also passed after having provided an opportunity for hearing to the petitioner. The petitioner's explanation in the

delay was considered fully by the State Election Commissioner and after applying his mind, he came to the conclusion that no interference either with the order of disqualification or the period of disqualification was called for and, therefore, the order dated 13.11.2006 cannot be faulted.

6. The learned counsel for the petitioner had referred to three decisions in support of his contention. These decisions are:-

1. ***Guinness Hotte Paksha Rangaswamy v. The Chief Election Commissioner of India and Others:*** ***AIR 2000 Karnataka 117***.

2. ***State of Gujarat v. Patel Raghav Natha and Others***: ***AIR 1969 SC 1297***.

3. ***Jawahar Lal Gupta v. The Rajya Nirvachan Ayog, Bhopal and another:*** ***AIR 2003 MP 161***.

7. The learned counsel for the respondent, on the other hand relied upon the decision of the Supreme Court in the case of ***L.R. Shivaramagowda and Others v. T.M. Chandrashekar (Dead) by Lrs and Others:*** ***(1999) 1 SCC 666*** at page 683.

8. As indicated above, every contesting candidate at an election of a ward is required to lodge an account of his election expenses with the Returning Officer within ten days from the date of election of the returned candidate by virtue of the provisions of Rule 92B of the said Rules. Rule 92F of the said Rules prescribes the procedure to be followed by the Returning Officer on the

expiration of the time specified in Rule 92B for the lodgment of account of election expenses. The same is relevant and material for the purposes of the controversy at hand and, therefore, the same is set out hereinbelow:-

> "92F. Report by the Returning Officer as to the lodging of the account of election expenses and the decision of the Election Commission thereon :- (1) As soon as may be after the expiration of the time specified in rule 92 B for the lodging of the accounts of election expenses at any election to a ward, the Returning Officer shall report to the Election Commission :-
>
> (a) the name of each contesting candidate ;
>
> (b) whether such candidate has lodged his account of election expenses and if so, the date on which such account has been ledged ; and
>
> (c) whether in his opinion such account has been lodged within the time and in the manner required by these rules.
>
> (2) Where the Returning Officer is of the opinion that the account of election expenses of any candidate has not been lodged in the manner required by these rules, he shall with every such report forward to the Election Commission the account of election expenses of that candidate and the vouchers lodged alongwith.
>
> (3) Immediately after the submission of the report referred to in sub-rule (1) the Returning Officer shall publish a copy thereof by affixing the same to his notice board.
>
> (4) As soon as may be after the receipt of the report referred to in sub-rule (1) the Election Commission shall consider the same and decide whether any contesting candidate has failed to lodge the account of election expenses within the time and in the manner required by these rules.
>
> (5) Where the Election Commission decides that a contesting candidate has failed to lodge his account of election expenses within the time and in the manner required by these rules it shall by notice in writing call upon the candidate to show cause

why he should not be disqualified under rule 92H for the failure.

(6) Any contesting candidate who has been called upon to show cause under sub-rule (5) may within twenty days of the receipt of such notice submit in respect of the matter a representation in writing to the Election Commission, and shall at the same time send to the Returning Officer a copy of his representation together with a complete account of his election expenses if he had not already furnished such an account.

(7) The Returning Officer shall, within five days of the receipt thereof, forward to the Election Commission the copy of the representation and the account, if any, with such comments as he wishes to make thereon.

(8) If after considering the representation submitted by the candidate and the comments made by the Returning Officer and after such inquiry as it thinks fit, the Election Commission is satisfied that the candidate has no good reason or justification for the failure to lodge his account, it shall declare him to be disqualified under rule 92 H for a period of six years from the date of the order, and cause the order to be published in the Official Gazette."

9. A reading of the above Rule indicates that where the Returning Officer is of the opinion that the account of election expenses of any candidate has not been lodged in the manner required by these rules, he shall, with every such report forward to the Election Commission the account of election expenses of that candidate and the vouchers lodged therewith. Furthermore, after a report is received under Sub-Rule (1) of Rule 92F, the Election Commission is required to consider the same and decide whether any contesting candidate has failed to lodge the account of election expenses within the time and in the manner required by these rules. It is pertinent to note the expression

used in Sub-Rule (4) of Rule 92F to the effect:- "as soon as may be after the receipt of the report referred to in Sub-Rule 1". This clearly indicates that the Election Commission must proceed with expedition and must not delay its action in this behalf. Sub-Rule (5) of Rule 92F clearly specifies that where the Election Commission decides that a contesting candidate has failed to lodge his account of election expenses within the time and in the manner required by these rules, it shall, by notice in writing, call upon the candidate to show cause why he should not be disqualified under Rule 92H for the failure. By virtue of Sub-Rule (6) of the said Rule 92F, the contesting candidate who has been called upon to show cause is required to, within 20 days of the receipt of such notice, submit a representation in writing to the Election Commission and, at the same, to send to the Returning Officer a copy of the representation together with a complete account of his election expenses, if not already furnished.

10. In the context of the facts of the present case, it is to be noted that the election expenses were to be lodged by 8.4.2002, the petitioner lodged them on 9.4.2002. But contrary to the requirement of the Rules, the Election Commission took about eight months to issue the show cause notice on 5.12.2002. Moreover, the show cause notice prescribed only a period of ten days for reply to be submitted by the petitioner whereas Rule 92F (6) clearly stipulated a period of twenty days. Sub-Rule (7) of Rule 92F requires the Returning Officer to forward to the Election Commission, within five days of

the receipt thereof, a copy of the representation and the account, if any, with such comments as he wishes to make thereon. All these provisions, referred to above, clearly indicate that the Election Commission as well as the Returning Officer were required to act expeditiously and not to delay the matter. It is true that there is no time limit prescribed under Rule-Rule (8) of Rule 92F for considering the representation submitted by the candidate and for passing an order of disqualification but it is settled law that when no time limit is prescribed for doing a particular act, then the same must be done within a reasonable period. This position is made absolutely clear by the decision of the Supreme Court in the case of ***Mansaram v. S.P. Pathak and Others:*** ***AIR 1983 SC 1239*** wherein the Supreme Court observed:-

> ".....when the power is conferred to effectuate a purpose, It has to be exercised in a reasonable manner. Exercise of power in a reasonable manner inheres the concept of its exercise within a reasonable time.

The same view was expressed by the Supreme Court in ***Ram Chand v. Union of India and Others:*** ***(1994) 1 SCC 44*** when it observed:-

> ".....It is settled that in a statute where for exercise of power no time-limit is fixed, it has to be exercised within a time which can be held to be reasonable."

Again in ***Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim:*** ***(1997) 6 SCC 71***, the Supreme Court observed as under:-

> ".....But in view of the settled position by several judgments of this Court that wherever a power is vested in a statutory authority without prescribing any time-limit, such power should be exercised within a reasonable time."

It was also observed in the same decision as under:-

> ".....where no time-limit is prescribed for exercise of a power under a statute it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time."

These decisions have been relied upon in the decision cited by the learned counsel for the petitioner which is reported in ***AIR 2000 Karnataka 117.*** In that decision the Karnataka High Court was considering a case under Rule 89 of the Conduct of Elections Rules, 1961 and the disqualification under Section 10A of the Representation of People Act, 1951 which are in pari materia to Rule 92F and Rule 92H of the said Rules, respectively. The Karnataka High Court, considering the said provisions of Rule 89 and the said Section 10A, concluded that the said provisions required the Election Commission to act expeditiously and within a reasonable period of time. In fact, the Supreme Court decisions referred to above, themselves indicate this to be a well settled position. The learned counsel for the petitioner is right in submitting that the Election Commission ought to act expeditiously even though there is no time limit prescribed for taking a decision with regard to disqualification, the provisions of Rule 92F clearly indicate the manner and speed at which the proceedings were to progress. The report was to be sent as soon as the period of the lodgment of account was over. The show cause notice was to be sent immediately after the Election Commission decided that there was a delay in lodgment of account. The candidate concerned was required to submit his reply within 20 days. The Returning Officer was required to forward the representation and his comments

within five days. When proceedings are to take place in this manner, it cannot, by any stretch of imagination, be submitted that the Election Commission had two years to take a decision. But, that is what the Election Commission had done. It further aggravated the situation as the petition under Rule 92I was not disposed of expeditiously. The State Election Commission took a further two years to decide the same. There is, therefore, no question that the State Election Commission has been guilty of delay and in fact, inordinate and unexplained delay in disposing of the question of disqualification and the review filed by the petitioner.

11. Apart from this, a reading of the impugned orders dated 7.12.2004 and 13.12.2006 would indicate that insofar as the first order, i.e. the order dated 7.12.2004 is concerned, the same is bereft of any reasons. It appears to be a general order issued in respect of several candidates inasmuch as even the name of the candidate does not figure in the printed order. There is only a slip pasted at the end which gives the name of the candidate and the reason for disqualification as "failure to lodge any account of election expenses on time". Paragraph 6 of the order makes interesting reading where it says that after considering *"their representation and replies .....they were given appropriate opportunity to defend their case in person before the State Election Commission vide letter sent to them by Registered A.D. Post."* It must be remembered that the petitioner was issued a show cause notice in his individual capacity. The

petitioner contested the election in his individual capacity and the liability of disqualification is also personal to him. Yet, the order speaks of various representations and replies. Even the letter number and date is not specified. Paragraph 7 of the order dated 7.12.2004 is even more surprising. It begins with the words "whereas their representation/reply, if given". It continues, "that if such replies have been given .....has been considered.....and the Commission is satisfied .....". This displays nothing but a complete non-application of mind on the part of the State Election Commission. It is on the basis of such a lack of consideration that the order of disqualification has been passed by virtue of paragraph 8 of the order dated 7.12.2004. I have no hesitation in holding that the order dated 7.12.2004 has been passed upon a complete non-application of mind and is clearly bad in law.

12. Unfortunately, while passing the order under Rule 92I of the said Rules on 13.11.2006 the succeeding State Election Commissioner made the following observations:-

> "I have gone through the record and have carefully considered all the relevant facts. His explanation put up before me <u>was duly considered by the State Election Commissioner while passing the impugned order dated December 7, 2004</u>. No additional material evidence which may warrant review of the order passed by the earlier SEC is put forth. Therefore, I do not see any ground for warranting the impugned order dated 7.12.2004."
>
> (underlining added)

This observation of the State Election Commissioner in the order dated

13.11.2006 is clearly erroneous inasmuch as nothing at all was considered by the said Election Commissioner while passing the impugned order dated December 7, 2004. Yet, the order dated 13.11.2006 records that the same was "duly considered by the State Election Commissioner" while passing the impugned order dated 7.12.2004. It may be noted that this case pertains to just one day's delay in the lodgment of the account of Election expenses. The petitioner has given various reasons for the delay. One of them, being mental tension because of the defeat he suffered in the election. This reason, of course, in my view, is no reason at all. In every election there are several candidates and only one is declared elected. It does not follow that all the defeated candidates can delay the submission of election expenses on account of the mental depression of having lost the elections. However, the petitioner's main reason for the delay in lodgment of the account was that he was unwell. His medical certificate was submitted promptly with his reply to the show cause notice. The same was not at all considered by the State Election Commissioner on 7.12.2004. It was referred to by the State Election Commissioner in the order dated 13.11.2006 but the petitioner was not granted any benefit on the ground that the matter had been considered while passing the order dated 7.12.2004, which was clearly not the case. Rule 92F (8) requires the satisfaction of the Election Commission that the candidate had good reason or justification for his failure to lodge his account. For arriving at this "satisfaction" or otherwise the Election Commission is required to consider the material on record and the explanation

offered by the candidate. If this consideration is missing, then an order of disqualification cannot be sustained.

13. I am, therefore, very clear in my mind that the orders are not in accordance with law and have not been based upon an application of mind in the proper perspective. The same require to be set aside and, accordingly, the impugned order dated 7.12.2004 as well as the order dated 13.11.2006 are set aside.

This writ petition is allowed.

**BADAR DURREZ AHMED**
**(JUDGE)**

**March 7, 2007**
**J**